

# Best Practices

## For Handling Difficult Personnel Issues

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**Juggling the  
Generations**

October 1, 2009



# Best Practice No. 1

You have a policy prohibiting  
the use of the internet  
to do background checks  
on applicants  
and current employees

# **Best Practice No. 1:** ***The Corollary***

You are cautious about discharging an employee for either posting something on the internet or because of something you found out about the employee on the internet

## Best Practice No. 2

You deduct money  
from an employee's paycheck  
only after you confirm  
you have a lawful basis to do so

## Best Practice No. 3

You promptly respond to  
and rectify  
the  
“equal opportunity offender”

# Best Practice No. 4

You  
memorialize key conversations,  
document performance problems  
in an honest, straightforward manner,  
and receive signed acknowledgements  
from employees

# Best Practice No. 5

You don't speak ill of the departed

(also known as,  
“You open the door for them  
and don't let the door hit them  
on the way out”)

# Best Practice No. 6

You've made a list of  
your company's "equal pay" practices  
(and checked it twice)

## Best Practice No. 7

Your employee handbook addresses cutting-edge employment laws:

- Anti-harassment (any kind);
- Electronic communications (which addresses internet and e-mail use, including web site postings);
- Use of cell phones while driving (**new Oregon law**);

## Best Practice No. 7, continued

Your employee handbook addresses cutting-edge employment laws:

- Disability/accommodation issues;
- A FMLA policy that, in part, incorporates some required provisions by reference; and
- Accommodation for religious reasons (**new Oregon law**)

# Best Practice No. 8

You believe that  
seeing “evil,”  
hearing “evil,”  
and speaking “evil”  
is better than being ignorant



# Best Practice No. 8, continued

The key “evils” to know:

- FMLA/OFLA Overlap
- ADA/AAO/Oregon Overlap
- New Oregon laws



# Best Practice No. 9, continued

## *FMLA/State Law Leave Overlap(?)*

- “Eligible employee” definitions
- Reasons for leave
- Family member definitions (serious health condition leave)
- Forms



# Best Practice No. 9, continued

## *ADAAA/State Disability Law – Key Issues*

- Definition of “major life activity”
- Definition of “impairment”
- ADA job descriptions – Overlap with FMLA
- Oregon: Significant overlap eff. 1/1/10



# Oregon Military Family Leave Act

## *Effective Immediately*

- During a “period of military conflict”
- An employee:
  - Who is a “spouse” of a member of the Armed Forces, National Guard or Reserve; and
  - Whose spouse was notified of an “impending call or order to active duty or who has been deployed”
  - May take up to **14 days of unpaid leave** per deployment
- Leave may be used for . . . .

***. . . Not specified in law!***

# Oregon Military Family Leave Act

- Certification allowed?  
Not specified (but recommended)
- Employee must have worked an average of at least 20 hours per week before the leave
  - No period of employment specified
- “Employer” – Same standard as OFLA
- Counts against OFLA entitlement
  - **Probably** counts against FMLA “active duty” leave
- Employee may elect to use accrued paid leave

# Employer “gag” bill

- An employer, including the employer’s “agent, representative or designee,” may not discharge or retaliate against an employee:
  - who “declines to attend or participate in an employer-sponsored meeting or communication”
    - if the “primary purpose” of the meeting is “***to communicate the opinion of the employer about religious or political matters***”

# Employer “gag” bill

- “Political matters” – “political party affiliation, campaigns for legislation or candidates for political office and the decision to join, not join, support or not support any lawful political or constituent group or activity”
  - “constituent group” – “civic associations, community groups, social clubs and mutual benefit alliances, ***including labor organizations***”
    - Yes, that means “unions”

# Questions?

*“... you can either ask the question  
or experience the answer ... .”*

- Author unknown

(source: <http://www.gaia.com/quotes/topics/questions>)

**Thank you!**

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*Materials available for downloading:*

**www.barran.com – click the “Convention Handouts” tab,  
and enter this password: NHRMA**